

N·A·M LAW DIGEST

ANALYSIS OF LAWS, LEGISLATION AND DECISIONS

Issued quarterly by the Law Department for the purpose of bringing to members of the Association information concerning significant court and administrative decisions, legislation and related matters.

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TO MEMBERS OF THE NATIONAL ASSOCIATION OF MANUFACTURERS:

In January the President in his annual message to Congress recommended the establishment of "permanent mediation machinery for the adjustment of labor disputes" in order that "some of our wartime lessons" may be applied "in working out a sound long-range labor policy." In the same month, the National War Labor Board began its fourth year as the governmental agency established to settle wartime labor disputes.

Because of the possibility that decisions of the War Labor Board may serve as patterns or guides for the adjustment of postwar labor disputes, it is felt that policies established by the war agency take on added significance—whether or not a permanent mediation agency is established.

This issue of the N.A.M. Law Digest, therefore, is an attempt to state general War Labor Board policy with respect to some of the more important recurring issues coming before it. It is necessarily repetitious of some material contained in previous Law Digests but is sent you in the hope it will be of assistance, both with respect to cases going to the War Labor Board and in future bargaining negotiations.

This brings up to date the material contained in N.A.M. Law Digests for February 7, 1942, March 1942, June 1942, November 1942, March 1943, June 1943 and September 1944 Supplement.

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THE NATIONAL WAR LABOR BOARD—POLICIES AND
DECISIONS 1942-1945

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The National War Labor Board POLICIES AND DECISIONS 1942-1945

A joint management-labor conference was called by the President on December 17, 1941 to undertake to work out an agreement for the prevention of strikes and for the handling of labor disputes for the duration of the war. On December 23 with the conferees deadlocked over the issue of the closed shop, the President announced that he "accepted" as an "agreement" the three point program of the joint conference. That agreement as announced by the President provided (1) that there be no strikes or lockouts, (2) that all disputes be settled by peaceful means, and (3) that the President set up a War Labor Board to handle disputes.

Pursuant thereto, the National War Labor Board was established by Executive Order 9017 on January 12, 1942 to succeed the National Defense Mediation Board, because "the national interest demands that there be no interruption of any work which contributes to the effective prosecution of the war."

The War Labor Board was created on a tripartite basis with equal representation among its twelve members from industry, labor and the public. The Chairman and Vice-Chairman are public members. Twelve Regional War Labor Boards organized on the same tripartite basis were created in January 1943, with full authority to make final decisions, subject only to review by the National War Labor Board. In addition, a number of tripartite panels and commissions in key industries—such as shipbuilding, lumber, trucking, nonferrous metal, mining, newspaper, etc.—have been created. These industry commissions have the same status as Regional Boards while the panels normally are authorized only to hold hearings and make recommendations to the appropriate Board.

I. JURISDICTION AND PROCEDURE

JURISDICTION Executive Order 9017¹ conferred jurisdiction on the War Labor Board to settle "labor disputes which might interrupt work which contributes to the effective prosecution of the war."

The War Labor Disputes Act² conferred jurisdiction on the Board over any "labor dispute which may lead to substantial interference with the war effort." In addition, that Act gave the War Labor Board jurisdiction "to decide the dispute, and provide by order the wages and hours and all other terms and conditions (customarily included in collective bargaining agreements) governing the relations between the parties, which shall be in effect until further order of the Board."³ Both Executive Order 9017 and the War

Labor Disputes Act, however, required that the decisions of the Board conform among others to the provisions of the Fair Labor Standards Act, the National Labor Relations Act, and to "all other applicable provisions of law."

The Board has held that under the Executive Orders and the War Labor Disputes Act, it has jurisdiction over all wartime labor disputes⁴, and that the absence of interstate operations does not divest the Board of jurisdiction to settle such disputes.⁵ The Board, it was said, "has a duty" under the War Labor Disputes Act to decide disputes as to wages and conditions of employment between intrastate employers and their employees.⁵

The War Labor Board also takes jurisdiction

over inter-union jurisdictional disputes,⁶ but it has held that it will not take jurisdiction of disputes involving local governments and their employees.⁷

The jurisdiction of the War Labor Board with respect to wage and salary stabilization arises from the Stabilization Act of 1942, Executive Order 9250 and the regulations of the Office of Economic Stabilization issued thereunder. The Board's authority extends to the approval, adjustment and regulation of all wage payments, and in addition, to salary payments to employees where the rate is not in excess of \$5000, and where such employees are represented by a labor organization and are not employed in a bona fide executive, administrative or professional capacity.⁸ All other salary adjustments are within the jurisdiction of the Salary Stabilization Unit of the Bureau of Internal Revenue.⁹

The Board has interpreted its jurisdiction in disputes involving wage or salary adjustments to include all types of industry regardless of the nature of the employment or the "relation of the companies' business to the prosecution of the war."¹⁰

PROCEDURE Disputes not resolved by collective bargaining come to the National War Labor Board either upon certification from the U. S. Conciliation Service or upon the assumption of jurisdiction on its own motion. Following assumption of jurisdiction the War Labor Board may (a) refer the case to the appropriate Regional Board, industry panel or Commission, (b) retain all or part of the case for disposition by the NWLB, (c) return the case to the Conciliation Service for further investigation or mediation, or (d) take such other action as it may deem appropriate, such as requiring further bargaining by the parties. Cases retained by the National Board itself are referred to a tripartite panel, or the Board may hold a public hearing on the merits before proceeding to issue its order.

Dispute cases are generally referred immediately to the Regional Board, together with all available data and reports. If the Regional War Labor Board does not consider the case ready for hearing, it may refer the case back to the parties for further negotiation, or to the Conciliation Service for further investigation or mediation. When the case is deemed ready for a hearing, a tripartite panel will be designated by the Regional Board to hear the case. The parties may agree to have the case heard by a single hearing officer, or,

if they so desire, they may waive their right to a hearing and submit the issues involved on briefs to a hearing officer.

Under the rules of procedure of the National War Labor Board, the parties are entitled to notice "at least ten days in advance of the date and place" of the hearing on the merits of the dispute. The hearing must be public and reasonable opportunity must be given the parties (1) to be present in person at every stage of the hearing, (2) to be adequately represented, (3) to present evidence orally or otherwise, (4) to question the opposing party or witness, and (5) to present oral or written argument on the issues. The failure of either party to appear does not deprive the Board of jurisdiction to proceed with the hearing and issue its directive order.¹¹

After hearing, copies of the panel report and recommendations are sent to each of the parties who may submit comments thereon within ten days after date of mailing to them. If the panel report is unanimous, the Regional Board normally will not hear arguments in the matter but will proceed to a decision. If not unanimous, the Regional Board may in its discretion hear arguments upon the case before reaching a decision.

Voluntary applications for wage and salary adjustments (WLB Form 10) are to be filed with the nearest Wage and Hour Office in the region. Applications for approval of proposed wage or salary adjustments may be made on behalf of more than one employer, by an employers' association or other similar organization. In the case of an employer with plants or establishments in more than one region, a single application may be filed covering employees in all or some of such establishments in the region in which the employer maintains his principal place of business.

Voluntary applications for wage or salary adjustments are ruled on by the Regional Board. However, in cases where the applicant intends to seek price relief, the Regional Board's ruling will become effective only upon final approval by the Economic Stabilization Director.

Rulings of a Regional War Labor Board in voluntary wage and salary adjustment cases are issued when made unless two public members, or a single public member where he is functioning on a tripartite quorum of three members, request a stay pending review by the National Board. If within the 10-day period the National Board sets the case down for review the ruling of the Regional Board will be stayed until final disposition of the case is made.

The rules of procedure governing the Regional Boards provide that no action will be taken by any Regional Board on any application for a wage or salary adjustment after the National Labor Relations Board or a similar state agency has ordered the holding of an election to determine the status of a labor organization as the collective bargaining agent of any of the employees involved.

In dispute cases the Regional War Labor Boards are authorized to issue directive orders to the parties when made. Within fourteen days after a Regional Board mails to a party a directive order in a dispute case, such party may mail to the Regional Board a petition seeking review by the National Board. If such petition is filed, "the entire order shall be suspended, unless and until the National War Labor Board directs, or has directed, otherwise, or unless the parties otherwise agree." If only part of the order is sought to be reviewed, any party may petition the Regional Board to make the rest of the order immediately effective. If no such timely petition is filed, the order of the Regional Board will stand confirmed as the order of the National War Labor Board. Similar procedures for appeal to the National Board are provided in the case of the denial or modification of voluntary applications for wage or salary adjustments.

The Regional War Labor Boards may reconsider directive orders or rulings on their own motion or on petition, except where the National Board on its own motion has assumed jurisdiction, either before or after the final order of a Regional Board.

In seeking review by the National War Labor Board the petitioner must establish that (1) the ruling or order of the Regional Board exceeds the National War Labor Board's jurisdiction, or (2) the ruling or order contravenes the established policies of the National War Labor Board, or (3) a novel question is involved of such importance as to warrant action by the National Board, or (4) the procedure resulting in the ruling or order was unfair to the petitioner, and has caused substantial hardship.

Decisions of the National War Labor Board on review are based upon the record made before the Regional Board, the petition, the answer, if any, recommendations of its Appeals Committee, and any further argument or proof that the Board may require. The Board has adopted the practice of requiring the parties to incorporate the terms and conditions of employment set forth in its directive orders in a signed agreement "reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board."

Under its rules of procedure the National War Labor Board will not entertain petitions for reconsideration of a Board directive adopting or affirming as its own the order of a Regional Board or Commission.

The War Labor Board has adopted the procedural rule that if a strike or lockout is in progress when a case is certified to it no action with respect to the merits of the dispute will be taken until the strike or lockout is discontinued.¹²

II. POLICIES OF THE NATIONAL WAR LABOR BOARD

As disputes came before the National War Labor Board for settlement the issues involved in the cases tended to fall into fairly well defined categories or patterns. In spite of the Board's announced intention to decide each case on its merits, the adoption of the opinion method of explaining the reasoning of its directives inevitably led to the establishment of precedents for disposing of similar issues in subsequent cases. As a result, Board policy with respect to many of the

recurring issues has become somewhat crystallized. There follow, therefore, statements with reference to some of the major issues coming before the War Labor Board and conclusions as to general Board policy with reference thereto. (For previous discussions of War Labor Board policy see N. A. M. Law Digests for February 7, 1942, March 1942, June 1942, November 1942, March 1943, June 1943 and September 1944 Supplement.)

A. POLICIES IN DISPUTE CASES.

COLLECTIVE BARGAINING In the event that collective bargaining negotiations between the parties have broken down or reached an impasse, the War Labor Board in some instances has felt it necessary to write the agreement for

the parties almost in its entirety. For example, in the *Federal Shipbuilding and Drydock Company* case¹³, many of the issues normally resolved by collective bargaining were dictated by the Shipbuilding Commission. In deploring the ap-

parent failure to explore all the possibilities of collective bargaining, the Commission stated:

"The War Labor Board was not designed to replace the normal processes of collective bargaining nor is it possible for it to so. The Commission wishes to stress the point that, while it is required to decide many disputed issues and pass upon all wage agreements, there is a very heavy responsibility on the parties to every agreement to submit to the Commission only the basic minima of matters which require its action."

In some instances, the Board will establish a panel to work out the terms and conditions of employment for the disputants when they cannot agree.¹⁴ In other cases, the War Labor Board may refuse to accept jurisdiction where it is evident from a large number of unsettled issues certified to it that the parties had not discharged their obligation to bargain collectively.¹⁵

An employer may insist on good faith collective bargaining, and when confronted with a union demanding immediate certification of the dispute to the War Labor Board, may so advise the Board and request that the union be directed to negotiate.¹⁶

CONTRACTS The War Labor Board has taken the position that as a general rule it will not abrogate the terms of a valid existing contract between the parties to a dispute, but will ask that these obligations be maintained and that the parties live up to the terms of existing contracts.¹⁷ The Board normally will not take jurisdiction of disputes involving issues which properly are subject to procedures established in the existing contract.^{17a}

The Board has declined to take jurisdiction of a dispute arising out of a union demand for wage increase while the present wage structure is set in an existing and continuing contract subject to reopening only by mutual consent.¹⁸ Likewise, provisions permitting the reopening of certain portions of a contract will be construed as continuing in effect all other terms of the contract.¹⁹

In dispute cases coming before it the National War Labor Board has adopted the practice of extending the terms of an expired collective bargaining agreement pending negotiation of a new agreement. The Board has said "that as a general rule the status quo at the expiration date of a collective bargaining agreement should be maintained pending the completion of a new agreement or final settlement of any issues in dispute."²⁰ In ordering terms and conditions of em-

ployment the War Labor Board normally provides that its orders are to remain in effect for a year from the date of the directive order, and at the expiration of that term, the contract should be automatically renewed unless proper notice is given within a specified period prior to the termination date.²¹

In a dispute case involving a change of plant ownership, the Board holds that the purchaser is bound by the unexpired union contract entered into by the seller and must therefore assume the obligations thereof.²²

UNION SECURITY Immediately upon its formation, the War Labor Board was confronted with demands by organized labor for union security—the issue which had wrecked its predecessor the National Defense Mediation Board. The issue came before the Board in many cases as a result of demands by unions for the closed shop or the union shop as a means of providing security for unions which had pledged themselves to forego striking in time of war.

The President had stated in connection with the *Captive Coal Mine* case "that the government of the United States will not order, nor will Congress pass legislation ordering a so-called closed shop." Since the Board was thus precluded from ordering a closed shop as a means of settling labor's demand for union security, it felt some compromise formula was necessary in consideration of the "no-strike" pledge. This compromise took the form of what has since become known as the Board's "standard" maintenance of membership clause.

The earliest form of maintenance of union membership was the "Marshall Field" clause which, because it applied only to employees who certified their intention to maintain their union membership, was voluntary in character.²³ In the *Walker Turner Company* case, the provisions for the arbitration of disputes as to whether an employee was a member in good standing and for the discharge of members who failed to maintain their union membership in good standing were provided for the first time.²⁴

In dissenting opinions in the *International Harvester and Federal Shipbuilding and Drydock* cases,²⁵ the employer members had urged that the Board's order provide that the contract contain a clause setting a period during which union members would be given an opportunity to resign. To meet the objections expressed in those dissents, the Board incorporated the so-called "escape

clause" into its maintenance of membership provisions.²⁶

Later, provisions forbidding unions to intimidate or coerce employees into membership and requiring any dispute arising under the maintenance of membership clause to be treated as a grievance subject to arbitration were adopted.²⁷

The "standard maintenance of membership" clause for use in cases where union security would be granted was adopted by the National War Labor Board on November 26, 1943.

The "standard" clause provides that all employees who, on the termination of the escape period, are members of the union in good standing, and employees who thereafter become members, shall as a "condition of employment maintain their membership in the union in good standing for the duration of the collective agreement." The clause requires the union not to intimidate or coerce employees into joining or continuing their memberships. Disputes arising as to whether an employee was a member after the escape period, or was intimidated or coerced during the escape period are to be submitted to an arbitrator appointed by the War Labor Board. Disputes as to whether an employee has failed to maintain his membership or was later intimidated or coerced into joining the union, are to be settled by the grievance machinery or an arbitrator selected by the parties.

The standard maintenance of membership provision provides a fifteen-day "escape period" during which members may resign from the union and continue their employment. A new escape clause is provided whenever the War Labor Board orders the renewal of maintenance of membership except under most unusual circumstances.³⁰ The Board has stated:

"It is the policy of the Board to provide maintenance only for the duration of the contract and upon renewal to provide the same 15-day "escape period" provided in the previous order or agreement."³¹

However, where the Board orders renewal of the maintenance of membership clause it has held that union members must have their initiation fees and dues paid up to the beginning of the new escape period before they may be permitted to resign from the union.³²

While other provisions of a directive order may be suspended on appeal to the National Board, the expiration date of an escape period ordered by a Regional Board in granting a maintenance of membership remains in full force and is not

affected by filing the petition for review with the National Board.³³

The Board has stated that maintenance of membership will not be granted as a matter of automatic policy.²⁸ The Board's own statements and statistics, however, support the view that maintenance of membership will be granted as a matter of policy when union security is in issue. As was said by Chairman Davis in a plea for the resolution of disputes through good faith bargaining:

"... The parties know full well that the Board will direct the standard maintenance of membership clause despite the demand of the union for a closed shop or the employer's opposition to any form of union security".²⁹

Furthermore, the record shows that in 291 cases involving maintenance of membership, between January 12, 1941 and February 1944, the National Board granted maintenance of membership in 271 cases, denied it in 18 cases and in 2 cases the issue was submitted to a referendum of the employees. In the same period, the Regional War Labor Boards in 871 cases, awarded maintenance in 783 instances, and denied this form of union security in but 34 cases. From even a casual study of the Boards' decisions and statistics, therefore, it would appear that standard maintenance of membership generally will be ordered upon demand. The fact that amicable relations exist between the company and the union is not grounds for denying maintenance of membership.³⁴

In a number of instances the WLB has denied maintenance of membership, or remanded the issue to the Regional Boards for reconsideration, because of recent strikes, work stoppages or union irresponsibility.³⁵ For example, the Board has denied maintenance of membership for a probationary period of six months because the union by an officially called strike had "demonstrated a lack of responsibility in carrying out its wartime obligations."³⁶

The War Labor Board also holds that maintenance of membership will not be granted to an irresponsible union. The Union must abide by its no-strike pledge, hold frequent elections open to its members, and make reasonable and regular financial reports to its members if it intends to meet the standards required by the Board for union responsibility.³⁸

Likewise, it is not the policy of the Board to add maintenance of membership to a previously agreed upon provision for preferential hiring. Neither will the Board order a preferential hiring

clause to an agreement presently providing for maintenance of membership.³⁷

Notwithstanding its fixed policy to order standard maintenance of membership when union security is in issue, it is the policy of the War Labor Board not to reduce a greater degree of union security where previously adopted pursuant to mutual agreement of the parties. Under its policy enunciated in the *Harvill Aircraft Corporation* case³⁹ the Board holds that it will not reduce a closed shop or union shop to maintenance of membership on the ground that it will not order a "diminution of union security."⁴⁰

Under the "Harvill Doctrine" the Board will not order an escape period in renewing a maintenance of membership clause where the original contract did not provide therefor.⁴¹

Likewise, a union which had secured a union shop will, in the event of a sale and transfer of its contract to a successor company, be awarded a continuation of that form of union security.⁴²

CHECK-OFF The check-off of union initiation fees and dues was ordered in the early decisions of the War Labor Board as a substitute for maintenance of membership and was considered a form of union security. Later it was granted to supplement maintenance of membership on the basis that it would eliminate disputes over dues collection, avoid the necessity for discharge of would-be delinquents, and save the time of union leaders for the settlement of grievances and the improvement of production.⁴³

Present policy of the War Labor Board is to grant the request for a check-off of union initiation fees, dues and assessments together with and as an integral part of union security, unless there is a substantial reason for denying it or unless it is clearly unnecessary.⁴⁴ Reasons given by the Board for denying the check-off have been the small size of plants, adequate opportunities to collect dues on company property or access to employee homes by union officials.⁴⁵

GRIEVANCE PROCEDURE In dispute cases involving the establishment of grievance procedure, it has been the policy of the War Labor Board to require the parties to incorporate into their collective bargaining agreements a full and effective grievance procedure providing for the settlement of day to day grievances which might arise or which involve an interpretation and application of the contract.⁴⁶ In many cases, the Board itself has drafted the provisions of the

grievance procedure to be inserted in the contract.⁴⁷ As a terminal point of the grievance machinery, the Board will normally provide that the parties resort to an arbitrator or impartial umpire.⁴⁶

In the handling of disputes over particular grievances, the War Labor Board has generally taken the position that the parties should use every means to settle their grievances by the grievance machinery provided in their contract or by direct negotiations. If the parties still cannot effect a settlement the Board will then normally require them to submit the issue to arbitration.^{46a}

With reference to the issue of payment for time spent in handling grievances, many demands have been made on employers that they should pay for all time spent by union stewards and committeemen. The War Labor Board has taken the position that while such union officials do not have a "right" to require the company to pay for this time,⁴⁸ it may direct the employer to pay for a percentage of such time.⁴⁸

ARBITRATION Executive Order 9017 establishing the War Labor Board provided in part that "the Board shall finally determine the dispute, and for this purpose may use mediation, voluntary arbitration, or arbitration under rules established by the Board." In furtherance of that authority, the War Labor Board has stated that the "fullest possible use" of arbitration machinery should be made⁴⁹ and has urged the Regional Boards to do everything possible to promote the widest utilization of arbitration as the final step in the grievance machinery.⁵⁰ The failure of the parties to provide for arbitration as the terminal point will normally result in the establishment of arbitration by the Board.⁵⁰

In dispute cases, the Board has in many instances ordered the inclusion of an arbitration clause as the final step in the grievance procedure⁵¹, and that all disputes not settled through the grievance procedure should be submitted to an arbitrator appointed by the Board.⁵² In ordering arbitration as the terminal point in the grievance procedure in dispute cases, the Board normally will spell out the arbitration clause and define the arbitrator's jurisdiction to cover all grievances or disputes concerning the application or interpretation of the contract.⁵³ In a few instances, the Board excluded from arbitration, disputes over new contract.⁵⁴

While the War Labor Board under its rules of procedure may review any arbitration award, it

is the policy of the Board not to do so, except where wage increases are involved.⁵⁵ Arbitrator's awards on wage and salary issues are subject to approval, modification or disapproval in accordance with the wage stabilization policy of the War Labor Board. Arbitration decisions on dispute issues authorized either by voluntary written agreement of the parties or by directive order of the Board to settle a dispute are final and binding on the parties.⁵⁵

Because of the War Labor Board policy to provide arbitration for all unsettled disputes, employers should exercise care in providing that the issues submitted to arbitration are set out in writing with particularity so that in the event the arbitrator does not decide all the issues or exceeds his jurisdiction, the employer may have recourse in the courts.⁵⁶

Attention is invited to the distinction in the binding effect between an arbitrator's award and the findings and recommendation of a referee or hearing officer. For that reason, the parties should ascertain definitely the nature and scope of the issues submitted and care should be exercised by employers to see that in agreeing to a hearing before a hearing officer, they are not in fact submitting the issues to arbitration.⁵⁷

SENIORITY Decisions of the War Labor Board on issues relating to seniority indicate that the policy of the Board is to permit the Regional Boards to use their discretion in deciding the matter on the basis of the facts in each case, or to refer the issue back to the parties for negotiations.⁵⁸ For example, in dispute cases on the issue of seniority in lay-off and rehiring, and on the question of whether seniority should be fixed on a job, divisional or departmental basis, the War Labor Board has stated that it "has no set policy on seniority of this type" but leaves the determination of these issues to the discretion of the Regional Boards.⁵⁹

With reference to "super-seniority" for certain union officials and representatives, the Board normally will grant union requests for such seniority preference, although limiting such preferential seniority to a specified number of stewards.⁶⁰

Recent manpower regulations of the Director of War Mobilization and the War Manpower Commission have given rise to a question of the seniority status of employees released from employment in a certain plant and transferred to plants where in the opinion of the War Manpower Commission the employee's services are more urgently

needed. In a recent case, the War Labor Board took the position that it was a proper subject for collective bargaining, and the Board held that employees temporarily transferred to other employers under order of the War Manpower Commission are entitled to accumulate seniority with their original employer as if their services had never been interrupted.⁶¹

NLRB-NWLB RELATIONS In deciding disputes and providing terms and conditions of employment governing relations between the parties, the War Labor Board is required by law to conform to the provisions of the National Labor Relations Act.⁶² Despite this statutory requirement, the early cases of the War Labor Board indicate a practice by the Board to "by-pass" provisions of the National Labor Relations Act. The Board in several cases ordered the employer to grant recognition to the union as the representative of the employees for the purpose of handling grievances.⁶³ In other cases, the Board ordered the company to recognize and bargain collectively with a union;⁶⁴ ordered the reinstatement of discharged employees;⁶⁵ and ordered an election to be held.⁶⁶

A conference between NLRB and NWLB in January 1944 brought to clarify this situation, resulted in the following agreement to govern the National War Labor Board and its agents on cases involving Wagner Act questions:

(a) In representation cases, where there has been no history of collective bargaining and the union has not been certified, the War Labor Board will normally decline to act, since such disputes are matters solely within the jurisdiction of the NLRB.

(b) Where there is no prior contract but the union has been certified, the WLB will give the certification the same effect as the NLRB, treating it as conclusive for a period of a year.

(c) Where there is a prior collective bargaining contract, regardless of whether there has been NLRB certification, or whether a prior certification has become "stale", the WLB in cases involving competing unions normally will withhold action to permit the company or either union to file a petition for an appropriate election. In appropriate cases, however, the Board may order the continuation of the terms and conditions of employment in the expired contract pending such election or dismissal of the petition.

(d) In those cases where the NLRB had ordered a company to bargain, the WLB may, if it deems

it necessary, prescribe the terms and conditions of employment, without prejudice to subsequent judicial determination of the propriety of the certification.

(e) Where a labor dispute is certified to the WLB within a year from an NLRB certification, the War Labor Board will normally provide that the terms and conditions of employment embodied in the contract shall remain in effect for a year from the date of the directive order.

(f) No action will be taken by the WLB on a voluntary application for wage increases (Form 10) after the NLRB has ordered the holding of an election to determine the appropriate bargaining unit which involves any employees covered by the application. The Board, however, may process such application during the period the union may be contesting the election charging company interference.⁶⁷

The National War Labor Board has adopted "the rule of presumed continuity of representative status," announced in the *Chicago Transformer Corporation* case.⁶⁸ In that case the Board said: "We will continue to recognize the already established status of a union as the bargaining agency in the absence of a clear showing of a compelling change in circumstances." Industry Members, in dissenting, argued that the Board's policy "requires a prima facie case to be made by the employer rather than by the union" which "is wholly unreasonable since there are serious statutory limitations on the right of an employer to inquire into the union affiliation of his employees, and such inquiry may well give rise to a charge of unfair labor practices. The most an employer can do is to raise a reasonable doubt as to the union's majority." In this connection, it is worth noting that the position of the Industry Members was supported by National Labor Relations Board Member Reilly.⁶⁹

Another approach used by the War Labor Board with respect to the question of recognition of the bargaining representative when challenged by the employer, is found in the directive order in the *Montgomery Ward and Company* case.⁷⁰ In that case the Board ordered the terms and conditions of the contract between the parties continued for a specified period, but the union was required in the meantime to file a petition for an election with the National Labor Relations Board to redetermine its status as representing a majority of the employees in the bargaining unit.

The War Labor Board has held that it will not determine a collective bargaining agency nor

order an employer and union to bargain collectively—both of which are functions of the NLRB—but that, in the absence of a contract, "it may be necessary for the Board to fix the terms and conditions of employment in order to settle the dispute."⁷¹

In some instances where a union has been disestablished by the NLRB, the War Labor Board has taken the position that the union has no standing as a disputant before it and will dismiss the case.⁷²

In the case of a union which admittedly has lost its majority status after its certification, the War Labor Board may retain jurisdiction of the dispute in order to fix the terms and conditions of employment. Such jurisdiction normally will be exclusive of issues of representation and union security, and without prejudice to the rights of the union to petition the NLRB, or the parties to negotiate a contract covering union members only.⁷³

The National War Labor Board has held that it normally will not order changes in the bargaining unit, for the reason that this is solely a function of the National Labor Relations Board.⁷⁴ Nor will the Board order reinstatement of employees alleged to have been discriminatorily discharged while the issue is properly before the NLRB.⁷⁵ The War Labor Board follows the policy of the NLRB in ordering reinstatement with back pay of wrongfully discharged employees, and permits the company to deduct wages earned elsewhere during the period of discharge.⁷⁶

The War Labor Board will normally recognize decisions of the NLRB as binding and when necessary in the interest of the war effort to settle a dispute may require compliance therewith.⁷⁷

The National Labor Relations Board has previously ruled that an organization of foremen is not an appropriate unit for collective bargaining within the meaning of the Wagner Act.⁷⁸ In spite of this finding, the War Labor Board assumed jurisdiction of disputes between supervisory employees and their employers, exclusive of the issues of recognition and discriminatory discharge. A special panel of the Board issued an extensive report with recommendations, which, if adopted and incorporated in a directive order, would have the effect of side-stepping the National Labor Relations Board on the issue and would provide limited recognition for foremen contrary to the decisions of the National Labor Relations Board.⁷⁹

UNION AFFAIRS AND CONDUCT In a number of instances, disputes involving union activities and attempts to make unions more democratic and responsible in the conduct of their internal affairs have come before the War Labor Board for decision. The Board has taken the position, however, that it should not interfere in the self-government or internal affairs of labor unions. This was particularly brought out in the Board's opinion in the *Humble Oil Case*⁸⁰ in which the evolution of the standard maintenance of membership clause was discussed. The Industry Members of the Board had strongly insisted that before union security was granted, the Board should require the union to conform to certain standards of accountability and responsibility to its members. The majority, however, was adamant in their position that the Board should not interfere.

With reference to jurisdictional disputes involving conflicts between rival unions over the right to perform certain work, the War Labor Board has evolved the policy of referring procedural questions to the Labor Members of the Board, and if this proves unsuccessful, to arbitration.⁸¹ In all other respects, the Board examines the dispute to determine if the question of allocation of work is defined in the contract, or, if not, whether it is defined by custom and practice. Thus, the Board has held that if the contract clearly defines how the work should be allocated, the terms of the contract are controlling.⁸² Otherwise, the Board will usually permit custom and practice to predominate the settlement of jurisdiction disputes,⁸³ although in one case in the absence of any definitive provisions of the contract, the Board held that the contractor involved was free to employ whichever union he desired.⁸⁴

With respect to disputes concerning union demands for the right to solicit memberships or conduct union activities on company time or property, the War Labor Board normally holds that such conduct may be prohibited during working hours and on company property in a manner which would interfere with production,⁸⁵ and such activities may be restricted to a limited number of employees.⁸⁶

CONFLICT WITH STATE LAWS The War Labor Board has taken the position that its powers derived from the war powers of the President and Congress are superior to and supplant any state legislation in the field of labor relations during the war emergency.⁸⁷ This

position is maintained by the Board in spite of the fact that the courts have held that its directive orders are "advisory" only and unenforceable,⁸⁸ and that under the War Labor Disputes Act, the decisions of the War Labor Board are required to conform to the Fair Labor Standards Act, the National Labor Relations Act, etc., and "all other applicable provisions of law."

The Board, however, acting under this broad implied authority has ordered the standard maintenance of membership clause incorporated in collective bargaining agreements even though under state law such provisions would be invalid unless certain referendum provisions provided by the state act were satisfied.⁸⁹ In that case, *J. Greenebaum Tanning Co.*, the Board said:

"The war powers of the President and Congress, under which the Board derives its authority to order the Greenebaum Company and its employees to abide by the maintenance-of-membership clause of the Board's directive order, are superior to and supplant any legislation of the State of Wisconsin which would place restrictions or conditions upon the maintenance-of-membership provision which the Board has seen fit to apply."⁸⁹

Similar instances of disregard of state law are noted in the *Colorado Springs Grocery & Meat Markets* case⁹⁰ and the *U. S. Vanadium Corporation* case⁹¹, wherein War Labor Board orders ran counter to the Colorado Labor Peace Act. In a more recent case, the Board has ordered the continuation of a closed shop provision in a contract, although an anti-closed shop amendment had been added to the state constitution by state referendum. In such a case, as was pointed out by dissenting Industry Members, the employer is put in the position of either violating state law, or being held in noncompliance by the War Labor Board.⁹²

In two instances, because of the war emergency state courts have accepted this alleged superior jurisdiction of the War Labor Board and have withheld action on labor disputes arising under their respective state acts which were in conflict with directives of the Board.⁹³

MANAGEMENT FUNCTIONS The National War Labor Board has on many occasions dealt with disputes in which demands have been made threatening management's responsibility for plant operation. The importance of those decisions cannot be over-emphasized since the precedents or policies established by the Board may well be of lasting significance to industry.

War Labor Board decisions on management functions were reviewed in the September 1944 Supplement to Volume VI of the NAM Law Digest. That discussion is not repeated. Since the preparation of that Supplement, however, the War Labor Board has issued a number of directives involving that problem. These directives could be used by the Board as precedents for overruling the doctrine expressed in the *Borg-Warner*^{93a} case to the effect that "management's right to discipline employees for cause as necessary for the efficient operation of its business is recognized." In fact some of the more recent decisions indicate that while the Board may be giving a nominal recognition to the *Borg-Warner* principle, that principle is being seriously restricted in actual practice.

Outstanding among recent decisions are those which have restricted management's right to (1) impose disciplinary action for violation of the contract, (2) to discharge for cause, (3) to subcontract work and (4) to promote employees to supervisory positions.

The Board has presently followed the practice of ordering reinstatement of all discharged striking employees, subject to the company's subsequent right to mete out discipline. Any discipline imposed would then be subject to any existing grievance machinery.^{93b} The threat to management's right to discipline is particularly brought out by the recent *E. A. Laboratories* case^{93c}, in which the War Labor Board ordered reinstatement of all striking employees, including three discharged union officials who had been found guilty of extortion from the company. Under the order of the Board, discipline might be imposed only after reinstatement and subject to the grievance procedure machinery.

Other decisions indicate that the Board has ordered the employer's right to discharge for cause should be made subject to the grievance procedure and, if necessary, arbitration where the

employee claims the discharge was without cause.^{93d}

The right of management to subcontract work when necessary was denied by a recent Regional Board decision^{93e} which ordered in a first contract that in contracting out work the company must contract with unionized shops, giving preference to those organized by the same national union. The effect of such decision was emphasized by the dissenting opinion of the Industry Members who pointed out that two-thirds of the employers in the area are operating under agreements with another national union; that the provisions would appear to violate the anti-trust laws prohibiting restraints of trade; that the employer would be prohibited from contracting out work to the lowest bidder; and that present subcontracting agreements of the employer must be abrogated if contrary to the Board's order.

The Supreme Court of the United States has stated that it is a fundamental right of an employer "to organize its business and select its own officers and agents."^{93f} Notwithstanding this fundamental principle, a recent Regional Board^{93g} has ordered that this prerogative of management to promote employees be made subject to arbitration, contrary to a clear contract provision that as to supervisory promotions the Company is to be the final judge of employee qualifications. On the other hand the National War Labor Board has also recently ordered that decisions of the company on promotions are final, unless it can be shown that the company acted in bad faith, in which event disputes were to be submitted to the grievance procedure.^{93h}

This pattern of decisions indicate a growing trend on the part of the Board to permit unions to trespass upon management's functions. Again the importance of such decisions to all employers is stressed.

B. WAGE AND SALARY STABILIZATION POLICIES.

The basic principles of the national stabilization program administered by the National War Labor Board are embodied in the Stabilization Act of October 2, 1942, Executive Order 9250 of October 3, 1942, Executive Order 9328 of April 8, 1943, and the Supplemental Directive of the Office of Economic Stabilization issued May 12, 1943.

The Stabilization Act of October 2, 1942 authorized and directed the President to issue a general order stabilizing prices, wages and salaries in so far as practicable on the basis of levels which ex-

isted on September 15, 1942, provided, that the President may make adjustments to the extent he finds necessary to aid in the effective prosecution of the war or to correct gross inequities.⁹⁴

Executive Order 9250, issued October 3, 1942 pursuant to authority granted by the Stabilization Act, created the Office of Economic Stabilization and provided that no increases or decreases in wage rates were to be authorized unless approved by the National War Labor Board. In addition the Board was directed not to approve any in-

crease in wage rates prevailing on September 15, 1942, except those necessary to correct maladjustments or inequalities, to eliminate substandards of living, to correct gross inequities, or to aid in the effective prosecution of the war.

Under regulations issued by the Office of Economic Stabilization on October 27, 1942, the National War Labor Board was given authority over all wage adjustments. The Board was also given authority to determine whether salary payments not in excess of \$5,000 to employees represented by a labor organization, and not employed in a bona fide executive, administrative, or professional capacity are made in contravention of the Act.

Under the so-called Hold-the-Line order (E. O. 9328, April 8, 1943) the authority of the Board to order or approve wage adjustments was limited to those "clearly" necessary to correct substandards of living or those made in accordance with the Little Steel Formula. The Board, however, could authorize reasonable wage adjustments in the case of promotions, reclassifications, merit increases, incentive wages or the like, provided that such adjustments did not increase prices. The Order, as interpreted by the Economic Stabilizer, also permitted the Board to make adjustments in accordance with the Act of October 2, 1942, "to aid in the prosecution of the war or correct gross inequities", provided that such adjustments did not increase prices or increase production costs.

Because the Board felt it could not effectively settle labor disputes under the comparatively stringent limitations of E. O. 9328, a series of conferences were had with the Director of Economic Stabilization. As a result, the Director issued the so-called May 12th directive "clarifying and defining the basis for the War Labor Board in making wage adjustments" under the President's Hold-the-Line order.

In issuing the policy directive, the Director stated that the "Hold-the-Line" order had removed the Board's authority to permit adjustments to correct "inequalities", and emphasized that the Board's authority to correct maladjustments was limited to adjustments necessary to eliminate substandards of living or those permissible under the Little Steel formula. The May 12 directive then authorized the War Labor Board to establish wage rate brackets by occupational groups and labor market areas of "sound and tested going rates". The rates within those brackets were to be regarded as stabilized, subject to change only as permitted by the Little Steel formula.

Therefore, as has been noted, the present au-

thority of the War Labor Board to grant or approve general wages increases is limited to (1) those necessary to correct substandards of living, (2) those made in conformity with the Little Steel formula, (3) those made to bring the rate up to the minimum of sound and tested going wage rates, and (4) those necessary to the successful prosecution of the war or the correction of gross inequities. An examination of the application of the War Labor Board's authority in administering the wage stabilization program would therefore seem to be in order.

LITTLE STEEL FORMULA In a message to Congress on April 27, 1942, the President declared that "to keep the cost of living from spiraling upward, we must stabilize the remuneration received by individuals for their work." As a result of that Presidential statement, one basic stabilization principle had been adopted by the Board prior to the passage of the Stabilization Act on October 2, 1942. That principle, since known as the "Little Steel Formula", was enunciated by the War Labor Board in the *Little Steel Companies* case, decided in July 1942.⁹⁶

The Little Steel formula was devised to compensate workers for the rise in the cost of living between January 1, 1941 and May 15, 1942, estimated at 15 percent by indices of the Bureau of Labor Statistics. This formula, therefore, established the stabilization policy for general wage increases based upon a rise in the cost of living. As the Board has stated, the Little Steel formula provides "that groups of workers who had not received general wage increases averaging 15 percent over the January 1941 straight-time rates were entitled to general wage increases to bring them up to that point."⁹⁶

The base used by the Board in computing allowances due under the formula is the straight-time average hourly earnings as of the payroll period ending nearest January 15, 1941.⁹⁷

The Little Steel formula is applied to the average rate of all employees within an industry, a plant or collective bargaining unit. It may be applied, however, to a unit within an establishment if the employer has always dealt separately with those employees in wage matters. The Board has held that the formula may be applied on either a company-wide⁹⁸ or bargaining-unit basis, so long as the method used is not unstabilizing.⁹⁹

In applying the formula the Board has ruled that the following increases made to employees must be off-set in computing allowances:

(a) "General" increases given to ten percent or more of the employees in the unit, without respect to increases in productivity and which are expected to result in increased labor costs per unit of product manufactured.

(b) Wage rate increases made in November or December, 1940, which were clearly intended to compensate employees for anticipated cost of living increases.

(c) Wage increases granted to compensate for the elimination of non-production bonuses, etc.

(d) Wage increases resulting from an acceleration of a progression schedule.

(e) Wage rate increases up to minimum standards established under the Wage-Hour Act, Walsh-Healey Act, state minimum wage laws, etc., and increases up to 50 cents per hour made without Board approval under the substandard of living order of the Board. (General Order 30).¹⁰⁰

The War Labor Board holds that the following types of increases may not be set off in computing increases permissible under the Little Steel formula:

(a) Wage payments resulting from the previous establishment or liberalization of vacations-with-pay plans, holiday pay plans or night-shift bonuses.

(b) Wage increases made in January 1941 or immediately following resulting from previous protracted negotiations.

(c) Adjustments made in piece rates as the result of a bona fide job reevaluation.

(d) Payment of overtime wages where not previously paid.

(e) Restoration of previous wage cuts.

(f) Christmas or year-end bonuses.¹⁰⁰

Wage rate increases under the Little Steel formula are distributed "across-the-board" to all employees involved in the appropriate unit. Each employee receives the same cents-per-hour increase, thus preserving the existing rate relationship, although lower paid workers will thereby receive a larger percentage increase than higher paid employees.

EXCEPTIONS TO LITTLE STEEL FORMULA Certain exceptions to the Little Steel formula have been adopted by the War Labor Board in applying the formula to the facts of a particular case.

Under the "Lever Brothers" doctrine the Board holds it will not approve the full allowance due under the Little Steel formula if the increase would have an unstabilizing effect on wages in an industry or in an area.¹⁰¹ The panel had found that the rates paid at the Lever Brothers plants

were on the whole substantially above rates paid for similar work in the area and were higher than those paid in the soap industry. In denying a maladjustment allowance, the Board held that to broaden an industry differential would be out of harmony with the stabilization program.¹⁰²

Another exception to the formula are cases involving commission method of wage payments. The Board has held that the formula normally is inapplicable to employees paid upon that basis. Each dispute case, the Board decided, should therefore be considered on its own merits.¹⁰³ Under the rules of the War Labor Board, no approval for an increase or decrease in commission earnings is required so long as the commission rate or method of compensation are not changed. However, a change from salary to commission basis does require the approval of the Board.¹⁰⁴

"Escalator" clauses providing for wage adjustments based on a rise in the cost-of-living will not be enforced where such adjustments would result in raises in excess of those permissible under the Little Steel formula.¹⁰⁵

SUBSTANDARD WAGES As previously pointed out, the National War Labor Board has authority to permit wage adjustments to correct substandards of living, notwithstanding the limitations of the Little Steel formula. Under General Order 30, the Board permits employers to increase wage or salary rates up to 50 cents per hour without prior Board approval, provided that any increases above 40 cents per hour may not furnish the basis either to increase prices or resist justifiable price reductions.¹⁰⁶

The philosophy of the Board in ordering substandard wage adjustments has been stated as follows:

"First, all workmen should receive wages sufficiently high to enable them to maintain a standard of living compatible with health and decency.

"Second, the real wage levels which have been previously arrived at through the channels of collective bargaining and which do not impede maximum production of war materials shall be reasonably protected. . . Without doubt wages in substandard brackets should not only be increased to meet changes in cost of living, but whenever possible, they should be raised to the standard level."¹⁰⁷

The distribution of substandard wage adjustments where ordered may have the effect of seriously disturbing existing wage rate differentials in a particular plant. In this connection the May

12 Policy Directive of the Office of Economic Stabilization stated in part:

"In connection with the approval of wage adjustments necessary to eliminate substandards of living . . . the Board may approve wage or salary adjustments for workers in immediately interrelated job classifications to the extent required to keep the minimum differentials between immediately interrelated job classifications necessary for the maintenance of production efficiency."

It is apparent therefore that substandard adjustments may have the effect of permitting employees, not otherwise so entitled, to benefit by general wage increases to the extent required to maintain differentials between "interrelated job classifications." This was forcefully demonstrated in the recent *Textile* cases¹⁰⁸ where the Board, after ordering a five-cent substandard increase, proceeded to order a blanket five-cent hourly increase for all workers to maintain "production efficiency." The order was made despite the limitation upon Board authority that such increases be confined only to "workers in immediately interrelated job classifications", and that such increases should be so "staggered" as to avoid the need for adjustment in higher wage brackets.¹⁰⁹

Largely as a result of the *Textile* cases, the National War Labor Board by resolution of February 26, 1945 authorized the Regional Boards to determine what rate or rates up to 55 cents an hour constitute substandard wages in each region for the purpose of Board approval of wage adjustments. In dispute cases where the rates for one or more job classifications are below the appropriate regional substandard minimum rate, the Regional Boards were instructed that it was within their discretion to take into consideration "appropriate prevailing rates" in making their determination as to whether they would order adjustments up to the 55 cents per hour rate.¹¹⁰ In voluntary cases under the Board resolution, proposed wage rates at or below the appropriate regional substandard rate may be approved without regard to the wage bracket rate for the particular job classification.¹¹⁰

Wage adjustments may, to a limited extent, be permitted for the purpose of preserving existing rate differentials for immediately interrelated jobs. The method of apportionment of such increases has been outlined by the War Labor Board as follows:

"(1) the increase should be so distributed that rates for any occupation shall not be fixed at

a level in excess of the rate prevailing for that occupation in the labor market; (2) it should be so distributed as to eliminate or reduce the unusual rate variations that now prevail within the company's wage scale; (3) it should be so distributed as to maintain the minimum differentials between immediately interrelated job classifications necessary for the maintenance of productive efficiency."¹¹¹

GROSS INEQUITIES The War Labor Board has defined "gross inequities" as wage rate inequalities which represent "manifest injustices that arise from unusual or unreasonable differences in wage rates."¹¹²

Under Executive Order 9328 and the May 12, 1943 policy directive, the War Labor Board was permitted to adjust wages to "correct gross inequities" provided that such adjustments did not bring the wages of the workers affected above the minimum of the going rates for comparable work in comparable plants or establishments in the same labor market area.

According to the Board, intra-plant inequalities arise when unusual or unreasonable individual or occupational rate differences exist within the same establishment, which the Board has authority to correct under the stabilization program.¹¹³ In a number of cases, the War Labor Board has ordered the parties to negotiate job classification plans to eliminate wage inequities.¹¹⁴ For example, in the *Basic Steel* case, the Board ordered the companies and the union to negotiate the elimination of existing intra-plant wage rate inequities and specified guide-posts to facilitate collective bargaining thereon. However, in approving negotiated agreements on job classifications and evaluations, the Board has stated that it would not disturb historical or peacetime differentials, nor would it sanction agreements contrary to wage stabilization.¹¹⁵

In a report to the OES Director summarizing its past practice in connection with the processing of "fringe" issues, the Board stated that it ordinarily would not approve a job evaluation program which provided a general wage increase to all employees. Further, in cases involving individual companies, the Board would normally lay down limits as to the percentage of employees and percentage of job rates which might be increased under an approvable job evaluation program. In order further to assure that wage rate alignment is accomplished within the prevailing wage levels, the Board stated that job evaluations must be based upon "anchor points" which are the wage rates

being paid in key occupations to a substantial number of workers within the plant.¹¹⁶

The Director of Economic Stabilization on March 8, 1945, authorized the War Labor Board to approve wage adjustments with respect to re-classifications and job re-evaluations, irrespective of the limitations of E. O. 9328, except that approval of the Director would be required "if there is reason to believe" that such adjustments will cause price ceiling increases. However, increases under re-classifications and job re-evaluations could not exceed an average for all employees in the plant of one cent per hour or one percent. Larger increases might be made in "rare and unusual" cases but only after approval by OES.¹¹⁷

Corrections in inter-plant wage relationships were restricted by the May 12 directive of OES to rate relationships by industries within particular areas, and, were to be made by reference to established brackets of sound and tested going rates for occupational groups in each area.

WAGE BRACKETS The May 12, 1943 directive of the Office of Economic Stabilization authorized the Board to establish wage rate brackets "by occupational groups and labor market areas" and to make general wage increases up to the minima of such brackets. The Directive further provided that the "rates within these brackets are to be regarded as stabilized rates, not subject to change save as permitted by the Little Steel formula." The War Labor Board defines a rate bracket as "a group, from minimum to maximum, of stable, tested rates for a given occupation in a given labor market."¹¹⁸

Wage-rate brackets are established by Regional Boards and Commissions and are determined by occupation and industry on the basis of all relevant wage data for particular labor market areas. Such labor market areas are normally single localities, although two or more closely contiguous and related localities may be joined as one labor market area.

Ordinarily, the minimum of the sound and tested going rate is set at a point below the average rate for the occupation. The minimum rate normally will then be about ten percent below the weighted average rate for the job classification in the area. The maximum rate is computed in the same manner.¹¹⁹

Wage brackets for particular jobs in the various labor market areas must be set or revised to reflect wage rates in effect as of April, 1943—the date of the Hold-the-Line Order authorizing their

establishment. Bracket rates or revisions, therefore, do not necessarily reflect current wage and salary rates.¹²⁰

In applying wage brackets the War Labor Board has held:

(a) In maladjustment cases, where application of the 15 percent formula would move the rate for a particular job classification above the maximum of the appropriate bracket, the increase should be limited to the maximum of the bracket.

(b) In inter-establishment rate relationships, the Board normally will not approve rates above the minimum of the respective brackets,¹²¹ except in "rare and unusual" cases.

(c) Wage adjustments to correct substandards of living should be conditioned on a process of "tapering" the increase so that successively smaller increases are granted to successively less immediately interrelated job classifications.¹²²

RARE AND UNUSUAL CASES The Stabilization Act of 1942 authorized wage adjustments necessary "to aid in the effective prosecution of the war." The May 12th directive of the OES limited the granting of such increases to those "rare and unusual" instances in which the critical needs of war production require the setting of a wage at some point above the minimum of the sound and tested going rate.

Under that authority the War Labor Board has authorized wage adjustments in certain industries engaged in critical war work as an aid to the alleviation of a serious manpower shortage. The "rare and unusual" aspect of such cases are brought to the attention of the War Labor Board by formal "certification" from the WPB, WMC or governmental procurement agencies. It must be shown that the establishment for which adjustments are sought is engaged in an essential activity, and has complied with all WMC regulations and policies with respect to recruitment, training and utilization of labor.

In his statement accompanying the May 12 Directive the Director of Economic Stabilization stated that "in rare and unusual cases where critical war production cannot otherwise be obtained, the minimum of the preexisting going rates may be stepped up to the next lowest of the going rates for other most nearly comparable work in the same labor market."

The Board has approved but few cases under the "rare and unusual" doctrine and wherever

possible, prefers to make wage adjustments in bracket minima, to correct maladjustments, or to eliminate substandards of living.¹²³ For example, the War Labor Board has approved rates to the top of the wage bracket in order to remedy a critical manpower situation in the aircraft industry.¹²⁴ In another case, the Board set a hiring-in-rate five cents above the bracket minima for a new plant in a scarce labor area.¹²⁵

The Board will normally deny requests for "rare and unusual" wage increases (1) if the adjustment would unstabilize wages in the multi-state area, and possibly nationally, (2) if the wage structure in the industry were not obsolete, (3) if evidence were not conclusive that increases would actually draw sufficient number of additional workers, and (4) if concerted effort on the part of local and federal authorities to solve the problem had not been made.¹²⁶

"FRINGE ISSUES" Many issues have come before the War Labor Board which do not fall within the basic wage standards above mentioned. These demands have been called "fringe" issues and while they do not affect the workers' basic hourly rate, they do tend to increase "take-home" pay. These "fringe" wage adjustments include demands for vacations with pay, shift differentials, premium pay, lunch time payments, sick leave, severance pay, guaranteed annual wages, etc.

It had been the practice of the War Labor Board for some time to order this "fringe" type of wage adjustment, although it had no authority to do so. Under Executive Order 9328, the War Labor Board was directed to authorize no further increase in wages or salaries except to correct substandards of living and in accordance with the Little Steel formula, except that "reasonable adjustments" might be made in certain instances such as promotions, reclassifications, merit increases and the like, "provided that such adjustments do not increase the level of production costs appreciably or furnish the basis either to increase prices or to resist otherwise justifiable reductions in prices." Under Section 2 of the May 12 policy directive, wage adjustments made by the Board predicated on substandards, Little Steel or the minimum sound and tested going rate criteria were subject to approval by the Director of Economic Stabilization if a price adjustment was necessary. Thus it is noted that under neither E. O. 9328 nor the policy directive of May 12 could the War Labor

Board order "fringe" wage adjustments, even though a price adjustment was not required.

On February 19, 1944 the Director of Economic Stabilization^{126a} relaxed these restrictions somewhat and gave advance approval to "incidental" wage adjustments ordered or approved by the War Labor Board, *provided* the Board did so "on the basis of their conformance to the practice prevailing in the industry in the area", and even then if increases in production costs were entailed, approval from the Director of Economic Stabilization was necessary where the Board's decision was of a "precedent or pattern making nature."

Notwithstanding these limitations imposed upon it, the War Labor Board continued to disregard such restrictions and continued ordering or approving "fringe" wage adjustments regardless of their non-conformance to "practice prevailing in the industry in the area." For example, the Board permitted liberalized vacation plans,¹²⁷ it ordered night shift differentials in the nonferrous metal mining industry,¹²⁸ and it approved travel time for the bituminous coal miners.¹²⁹ Finally, when the Board in the *Basic Steel* case granted second and third shift differentials distinctly contrary to the practice in the steel industry, the Director of Economic Stabilization reminded the War Labor Board he was precluded by the language of E. O. 9328 from approving wage adjustments of the so-called "fringe" variety if they adversely affect prices.¹³⁰ In spite of protests of the War Labor Board against this policy, the Director of Economic Stabilization remained adamant.

This impasse was partially clarified by a directive from the Economic Stabilizer on March 8, 1945 to the National War Labor Board on "fringe" wage adjustments. By that directive, the Board was authorized to approve or direct certain wage adjustments, irrespective of the limits of E. O. 9328, subject to the approval of the Director of Economic Stabilization "if there is reason to believe that such adjustments will cause an increase in price ceilings or production costs." In addition, the advance approval on fringe adjustments given by the Director's letter of February 19, 1944 was rescinded.

This directive established "guide posts" on the issues of vacation with pay, shift differentials, merit increases and automatic progressions, and re-classifications and re-evaluations.

The question still remains, however, of how long the above policy of Mr. Vinson as Director of Economic Stabilization will remain in effect, in view of Mr. Davis' appointment to succeed Mr. Vinson.

Whether Mr. Davis will be bound by and follow the policies of his predecessor remains to be seen. It will be recalled that it was Mr. Davis as Chairman of the War Labor Board who led the fight to give the Board more leeway in deciding fringe issues. He then had taken the position that the Office of Price Administration should not have veto power over such increases. No doubt, the decisions of the War Labor Board in the *Textile* and *Packing* cases, pending before Mr. Vinson when he became Federal Loan Administrator, will be given approval by Mr. Davis, perhaps on a "special" case basis. Because of the authority the Director of Economic Stabilization has over decisions of the War Labor Board, the future actions of that office will largely determine the national wage stabilization policy.

The directive of March 8, 1945 established ceilings for only four of the so-called fringe issues. Other "non-basic wage adjustments" or changes in working conditions affecting earnings, were by that directive to remain subject to the restrictions of E. O. 9328. There follows, therefore, a discussion of War Labor Board policy with respect to the so-called "fringe" issues.

VACATIONS WITH PAY In its earlier decisions on cases involving disputes over vacations, it was generally the policy of the War Labor Board to order vacations with pay on the practice in the local area or in the particular industry.¹³¹ At present, however, the Board's policy with respect to paid vacations when an issue in dispute cases is to order one week for one year's service and two weeks after five years' service.¹³²

The Director of Economic Stabilization on March 8, 1945 in establishing ceilings on certain "fringe" issues authorized the War Labor Board to continue to direct or approve vacation provisions of "one-for-one, and two-for-five."

In announcing its policy, the War Labor Board had stated that it was "within the discretion of the Regional Boards to order or approve vacation plans providing for two weeks after five years' service even though it is not shown that such provisions are the prevailing practice in the local area or in the particular industry."¹³³

In Board orders, vacation pay is ordinarily to be computed by allowing 40-hours pay at straight-time rates, plus shift differentials and overtime, for one year's service, and 80-hours pay representing two weeks' vacation, or upon such other basis as the Regional Board may deem proper. Where the workweek has been increased the Board will

usually require vacation pay to be computed on the basis of the increased workweek.¹³⁴

SHIFT DIFFERENTIALS The War Labor Board has regarded the physical and social disadvantages adhering to night work as generally persuasive for approving premium payments for late shifts.

Until recently, the Board considered prevailing practices in the industry and area, or in other plants of a particular company as controlling such issue.¹³⁵ In the *Globe Steel Tubes Company* case the Board enunciated certain factors to be considered in granting shift premiums: (1) practice in the area and industry, (2) whether premiums were necessary to bring wage rate relationships within the plant into proper balance, and (3) whether regular rates take into account night-work.¹³⁶

In plants operating on a rotating basis, it has been the policy of the War Labor Board not to order a night shift premium,¹³⁷ for the reason that under this type of work schedule, all employees take a regular turn on the night shift, and wage rates therefore include compensation for night work.¹³⁸ The payment of a night shift bonus in such cases, the Board has held, would have the effect of making a double payment for the same factor.

The industry and area test was discarded in the *Basic Steel* case¹³⁹ where the War Labor Board ordered 4 and 6 cent night shift differentials in spite of the fact that it had not been the practice in the steel industry to pay shift premiums. On the authority of that case, a trend toward granting shift differentials regardless of industry or area practice is developing. This practice is also prevalent irrespective of whether the particular plant operates on a "non-continuous" or on a rotating shift basis.¹⁴⁰

The March 8 directive of the Office of Economic Stabilization placed a ceiling on shift differentials in plants operating on a "non-continuous" basis of not to exceed 4-cents per hour for second shift and 8-cents per hour for the third shift.

PREMIUM RATES The Fair Labor Standards Act provides that for all work in excess of forty hours a week, any employee who is engaged "in commerce or in the production of goods for commerce" shall be paid "time and one-half the regular rate at which he is employed."

Executive Order 9301 issued on February 9, 1943 established a minimum work week of 48-hours. The War Labor Board thereafter issued a state-

ment¹⁴¹ defining its jurisdiction on overtime pay in view of this order. The Board stated that approval to pay overtime rates for work in excess of 40-hours in any one week would not be required if such payments were in accordance with (a) the provisions of the Fair Labor Standards Act or any similar Federal, state or local law, or (b) the provisions of a collective bargaining contract entered into prior to October 3, 1942, or (c) the employer's past custom and practice prior to October 3, 1942. Otherwise, the Board held, approval must be obtained since overtime payments are in the nature of a wage increase. In dispute cases coming before it, the Board will normally direct that overtime payments be made for all hours worked in excess of eight in one day or forty in one week.¹⁴²

Executive Order 9240 of October 1, 1942 placed certain limitations under which premium rates may be paid for work on Saturday and Sunday as such. All cases and questions arising under this Executive Order are handled by a Joint Committee of the Board in cooperation with the Department of Labor.

The Board will normally order premium pay for the sixth day worked, when necessary to settle a labor dispute, holding that under Executive Order 9240 this procedure is permissive and therefore appropriate for Board order. The Industry Members dissented on the ground that under the terms of the Executive Order, premium pay for the sixth day should be ordered only when required by custom or collective bargaining contract.¹⁴³ The War Labor Board also has approved compensatory bonus payments to make up for the loss in earnings caused by the automatic operation of Executive Order 9240, where the previous premium pay for Saturday or Sunday work was considered an integral part of the agreed wages for the job.

In addition to the payment of overtime, the apparent willingness of the Board to grant or direct other "premium" payments will bear watching in the future operations of the Board because of the practice of unions to seize upon isolated board directives and argue them as board policy in making demands on other employers. Board decisions on some such "premium" issues are here noted.

The Board recently granted employees an extra 15-minute straight time pay for time spent in changing clothes. In so ruling, the Board affirmed the reasoning of a Regional Board that changing to and from work clothes is "working time" controlled by and for the benefit of the employer.¹⁴⁵

This view conforms substantially to interpretation of the Wage and Hour Division, and, therefore more demands of a similar nature may be expected from unions.

While the War Labor Board normally will not order sick leave plans in dispute cases it will approve reasonable plans agreed to by a company and union or proposed by an employer.¹⁴⁶ In a recent case, however, the Board did order sick leave benefits for hourly-paid workers, on the theory that it was an intra-plant inequity to provide such benefits to monthly-paid employees and not to production workers.¹⁴⁷

Similarly, it has been the practice of the Board in dispute cases not to order payment for lunch periods,¹⁴⁸ although it may direct that a previously paid lunch period be continued.¹⁴⁹

SEVERANCE PAY Severance or dismissal pay generally refers to the payment of additional compensation to an employee who is involuntarily laid off or discharged through no fault of his own. It is known that many unions, looking ahead to the certain displacement of large groups of employees during reconversion, are making demands for the payment of a severance or dismissal bonus to such employees. That issue, therefore, has been and will be brought to the War Labor Board as a dispute.

With respect to the payment of a "severance" bonus to employees who enter the armed services the War Labor Board has held that where the employer is financially able to do so it "is clearly not only in the national interest but also tends toward improving industrial relations." The inclusion of such a provision in the contract if voluntarily agreed to would be proper, the Board held, but added, "we cannot direct that such a clause be included."¹⁵⁰

Few dispute cases on severance pay for employees, other than those entering the armed services, have been brought to the War Labor Board. In two early cases, however, the Board denied the demand primarily on the ground that there was no established industrial practice in regard to severance pay.¹⁵¹ In another case, the Board approved a voluntary severance payment plan submitted by the company.¹⁵²

In the *Basic Steel* case, the unions made an outright demand for severance pay for all employees when a plant or any portion is permanently closed down. In that case, the Board, while approving the principle of severance pay for workers displaced as a result of a permanent closing down of

plants or portions thereof when the demands of war production fall off, held that "it remains for the parties to develop by collective bargaining appropriate provisions for severance payment." The Board directed the companies and the union to negotiate the terms of a severance pay agreement appropriate to each plant or company. The Board also held that it would approve under the wage stabilization program reasonable provisions for severance payments which may be mutually agreed to.¹⁵³

BONUSES The policy of the War Labor Board concerning the payment of non-production, year-end or Christmas bonuses is expressed in its General Orders.

General Order No. 10 provides that employers may continue to pay without Board approval a bonus or gift in a fixed amount not exceeding the total paid for like work during the preceding bonus year. If the bonus is computed on a percentage, incentive or similar basis, it may be continued without approval if the rate and method of computation have not been changed. For the year 1944, the War Labor Board permitted an employer to pay each employee, without approval of the Board, a Christmas or year-end bonus not exceeding \$25 whether or not such had been previous practice.

If an employee is regularly compensated on a commission or fixed percentage basis, a change in the rate or method of compensation constitutes a wage or salary adjustment which requires the approval of the Board.¹⁵⁴

In dispute cases, the Board considers whether the bonus paid was within the exclusive discretion of the employer or whether it was or had become an integral part of the employee's wages. The Board has held in cases before it that if the bonus was in the nature of a gratuity and paid within the exclusive discretion of the employer, the non-payment of the bonus for a year would not be a wage or salary decrease. But, the Board also holds that if the bonus either by agreement or custom and practice was considered an integral part of the employee's wages it should be continued, and its nonpayment would be a wage decrease contrary to Board policy.¹⁵⁵

General Order 38 states WLB policy with respect to production bonuses based upon incentive or piece rates. That order provides that the institution of a new incentive wage or piece-rate plan, or the extension to departments not covered by existing plans require Board approval. Likewise, the change or modification of an established in-

centive or piece-rate plan must be approved by the Board. Board approval is not required where the rate is changed to reflect a change in method, product, tools, material, design, or production conditions, which maintain the established relationship between earnings and effort. The Order further states that the failure to make such a change as above outlined would constitute an unauthorized wage increase or decrease. In establishing incentive wage or piece-rate plans for new production items, the Board holds that equivalent occupational earnings must be maintained for equivalent effort.¹⁵⁶

MERIT AND LENGTH OF SERVICE INCREASES The War Labor Board under authority of Executive Order 9328 is au-

thorized to permit reasonable adjustments in wage rates for individual employees for merit, length of service, promotions, reclassifications, or the like. Such adjustments where made, however, must not increase production costs or prices. Pursuant to this authority, the War Labor Board by General Orders Nos. 5, 9 and 31 has promulgated certain conditions and limitations under which these adjustments may be made.

Merit increases are individual wage adjustments made as a reward for improved quantity or quality of work. Automatic length-of-service increases are individual adjustments made automatically at the end of specified periods of satisfactory service. In making either merit or length of service increases, General Order 31 provides that the total of such increases for any individual employee shall not exceed during any year 10-cents per straight time hour or more than two-thirds of the difference between the appropriate minimum and maximum of the rate range, whichever is greater. However, the total amount that may be expended for all employees in the establishment in any one year must not exceed an average of 5-cents per straight time hour for all employees. These provisions are commonly referred to as the "five and ten" rule.¹⁵⁷

In the directive of March 8, 1945, the Director of Economic Stabilization authorized the Board to approve or grant merit increases and automatic progressions "on a basis no more liberal than that embodied in the Board's present standards." The War Labor Board, therefore, is limited to directing or approving merit increases or automatic progressions based on its "present standards" and in dispute cases may not exceed the principles laid down in the *General Electric Company* and *Bijur*

Lubricating Corporation cases.¹⁵⁸ The Board in the *General Electric* case held that it will normally not order automatic-in-grade progression plans in dispute cases, since progression within rate ranges should be based on an individual's ability and performance. In the *Bijur* case, the Board took the position that in dispute cases on merit increases, it will not order a plan whereby the amount of merit increases will exceed the "five and ten" rule of General Order 31, stated above, nor permit the speed of such progressions to exceed the Board's rules in voluntary cases, hereinafter set forth.

In voluntary applications, the War Labor Board may approve plans for automatic progression from the minima to the maxima of established rate ranges at regular intervals, provided the speed of such progressions to the maximum of the range is no faster than twelve months for unskilled jobs, eighteen months for semi-skilled jobs and twenty-four months for skilled jobs.¹⁵⁹

GUARANTEED ANNUAL WAGES More and more union demands for guaranteed annual wage plans to assure full employment and economic security for the workers will undoubtedly be made as an aftermath of the demand in the *Basic Steel* case. The War Labor Board in that case held that the demand in its present form with regard to the steel industry was unworkable, and it was not prepared in that case or in other dispute cases to impose such guarantees by order.¹⁶⁰ The Board recommended to the President that the "question of guaranteed wage plans and the possibility of their future development in American industry as an aid in the stabilization of employment" should be made the subject of a comprehensive study. Pursuant to such recommendation, the President on March 20, 1945 requested the Advisory board of the Office of War Mobilization and Reconversion to make a study of the question of guaranteed annual wage plans.

SEX DIFFERENTIALS With the large employment of women in industry during the war, the issue of differentials in the rates of pay between men and women has come before the Board in a number of cases. The Board in resolving such disputes has generally followed its rule of "equal pay for equal work" and has applied this doctrine to order equal pay for women who replace men and produce work of comparable quantity and quality.¹⁶¹ However, the Board normally will not eliminate such differentials between men and women where (1) the differential

is of long standing and (2) many jobs have been performed exclusively by women.¹⁶²

RETROACTIVITY One of the most controversial and bitterly debated questions dealt with by the War Labor Board has been the application of its policy with respect to the effective date of wage increases ordered in dispute cases.

Much of the criticism of the Board's policy with reference to retroactivity of ordered wage increases has resulted from the long delays usually present between the time the Board takes jurisdiction and the time a directive order is issued. These delays, coupled with the application of the retroactivity policy, have resulted in substantial and irreparable injury to many companies.

In September 1943 the Board in effect codified its previous practice and announced its policy "from which it now rarely deviates" for the fixing of effective dates for ordered increases. Under that policy, the Board in fixing the effective date of wage increases will use the date agreed upon by the parties or fixed by their contract, or in the absence of such agreement, the expiration date of a previous agreement governing the same bargaining unit. If there is no agreement of this type, the Board will use the date of certification by the Conciliation Service or assumption of jurisdiction by the War Labor Board. Some other date may be used, the Board holds, only if special circumstances are involved in the case.¹⁶³

When necessary to settle a dispute and retain the case for further consideration, the Board may predetermine and direct a retroactive date by interim order pending completion of negotiations or the issuance of a final directive order on the terms and conditions of a new contract.¹⁶⁴ The War Labor Board has also held that a retroactive date previously agreed to by the parties will not be set aside because the union subsequently staged a strike.¹⁶⁵

The National War Labor Board holds that the employer's inability to make retroactive payments, or that the company is operating at a loss, is not sufficient reason to deny a justifiable wage increase. In this respect the Board has stated:

"It has been the policy of this Board to ignore the financial position of the employer in settling labor disputes over wage issues. The Wage Stabilization Act and the War Labor Disputes Act which we administer do not make the financial position of the employer a factor to be taken into consideration in determining the wage rates to be paid in war time."¹⁶⁶

III. COMPLIANCE

DISPUTE As has been noted, no statutory recog-
CASES nition of the National War Labor
Board existed prior to the passage of
the War Labor Disputes Act in June 1943. There-
fore, to secure compliance with its orders, it was
necessary for the Board to rely upon cooperation
of the parties, the pressure of public opinion and
the broad wartime powers of the President. As
stated in the *Little Steel* case, the Board depended
upon "the war powers of the President * * * to
take such steps as may be necessary to prevent
and settle labor disputes which threaten to disrupt
the successful prosecution of the war."¹⁶⁷

By passing the War Labor Disputes Act over
the President's veto, Congress gave the Board au-
thority "by order" to decide disputes and pre-
scribe terms and conditions governing the rela-
tions between the parties "which *shall* be in effect
until further order of the Board." That Act, how-
ever, did not expressly provide for court review
of Board orders nor did it impose statutory
penalties.¹⁶⁸

Since the law provided that Board orders
"*shall*" remain in effect until further order, it
would seem to be clear that the Board could suc-
cessfully have petitioned courts of equity for man-
datory orders directing disputing parties to abide
by the terms and conditions of employment estab-
lished under procedures provided for by the War
Labor Disputes Act. The Board, however, chose
not to seek court enforcement of its orders. On
the contrary, it made every effort to escape judi-
cial interpretation of the scope of its authority and
the extent of its power.

One of the first cases in which an employer
sought court review of a War Labor Board order
was brought by *Montgomery Ward & Company* in
the U. S. District Court for the District of Colum-
bia.¹⁶⁹ In that case the court ruled that orders
issued by the Board are "justiciable". In so ruling
the district court relied upon the U. S. Supreme
Court decision in *Texas & New Orleans R.R. Co.*
v. Brotherhood of Railway Clerks, et al. (281 U. S.
548) wherein the Court in construing a similar
statute stated:

"The absence of penalty is not controlling.
The creation of a legal right by language suit-
able to that end does not require for its effec-
tiveness the imposition of statutory penal-
ties."

While the district court's reasoning in the *Ward*
case appears sound, the ruling was reversed by

the Court of Appeals for the District of Columbia
on the ground that orders of the Board were "ad-
visory" and unenforceable.¹⁷⁰ The action of the
Court of Appeals presumably was based upon a
hesitancy to interfere with the President in time
of war. At any rate, at the present time, parties
to a War Labor Board proceeding are not able to
secure judicial determination of their rights under
the War Labor Disputes Act.

Since Board orders are held to be advisory and
unenforceable, it would appear that the dispu-
tants would be free to accept or reject the Board's
advice as they see fit, without fear of subsequent
coercive action. Such, however, is not entirely
the case.

Section 3 of the War Labor Disputes Act em-
powered the President to take immediate posses-
sion of any "plant, mine or facility" whenever he
finds after investigation that "there is an inter-
ruption of the operation" thereof as a result of a
"strike or other labor disturbance". After taking
possession, the President may operate such seized
properties through any agency of the Government
he may designate.

Under the law, it seems clear that the President
has authority to seize properties "equipped for the
manufacture, production, or mining of any arti-
cles or materials which may be required" or use-
ful in connection with the war effort. A district
court has held, however, that such authority does
not extend to facilities or establishments engaged
solely in "selling and distribution". In the same
case, *U. S. v. Montgomery Ward & Co.*,¹⁷¹ the Dis-
trict Court in Illinois held that the general war
powers of the President permit seizure of prop-
erty in a theatre of war but that constitutional
guarantees preclude the seizure of properties out-
side such theatres in the absence of statutory au-
thority. Direct appeal of that decision to the Su-
preme Court was denied the Government and
review by the Circuit Court of Appeals is now
pending.

In cases where there is defiance of a Board
order, the customary procedure is for the matter
to be referred to the President for appropriate
action by him. This usually results in govern-
mental seizure and operation of the property of
the company involved in the particular case, re-
gardless of whether it is the employer or the em-
ployees who are not in compliance. As of March
15, 1945, plant seizure had been ordered in 27
instances.¹⁷²

In addition to the threat of seizure, various "sanctions" may be imposed against parties refusing to comply with War Labor Board directives. Under Executive Order No. 9370, August 16, 1943, the President authorized the Director of Economic Stabilization to impose so-called "lesser sanctions" against employers, unions and individuals "in order to effectuate compliance with directive orders of the National War Labor Board."

In the case of non-complying employers, the Director may require other governmental agencies to withhold or withdraw any priorities, benefits or privileges extended, including transportation and fuel. Furthermore he may require the withholding of contracts and the cancellation of existing contracts.

When a union refuses to comply, the plant will be taken over under the provisions of the War Labor Disputes Act. The Director may then require the appropriate agency to ask the Board to modify its order so as to withhold from the union the benefits, privileges or rights accruing to it under the agreement or proposed agreement with the employer until compliance is achieved.

With reference to non-complying individuals, under Executive Order No. 9328 the Director may require the proper agencies to enter appropriate orders relating to the "modification or cancellation of draft deferments or employment privileges, or both".

While they have been applied in very few instances, it is clear from the provisions of Executive Order No. 9370 that employers who defy the "advisory" orders of the War Labor Board may be put entirely out of business by the imposition of the so-called "lesser sanctions". This could be so even in spite of the fact that resort to the courts to test the validity of the Board's orders cannot be had.¹⁷³

ENFORCEMENT OF OBSERVANCE OF THE WAGE AND STABILIZATION PROGRAM salary stabilization program is required by sections 5 and 11 of the Stabilization Act of 1942, as extended.

Under section 5 of the law, the President is authorized to prescribe by regulation the extent to which any wage or salary payment made in contravention of administrative regulations "shall be disregarded by the executive departments and other government agencies in determining the costs or expenses of any employer for the purposes of any other law or regulation". This authority was delegated to the Office of Economic Stabilization and in turn redelegated to the War

Labor Board, and Bureau of Internal Revenue within their respective spheres of jurisdiction.

To effectuate compliance with its wage and salary stabilization regulations, the National War Labor Board has established tripartite enforcement divisions in each of the Regional Boards. The Board rules of procedure provide that in any case where the regional attorney "believes" an employer has violated the wage stabilization regulations he shall report such case to the enforcement division.

After a hearing on the alleged violation, the enforcement division, by a majority vote, is authorized to make findings of fact and, if a violation is found, to determine the extent to which any wage payments made by the employer are to be disregarded. The findings and determinations of the enforcement division are final, subject only to appeal to the National War Labor Board. After such appeal, or when none is taken, the determination of amounts found to be wrongfully paid are forwarded to the appropriate governmental agencies.¹⁷⁴

Regulations of the Office of Economic Stabilization provide that the entire amount of payments made in contravention of the regulations, not merely excess amounts, are to be disregarded in determining costs or expenses of the employer.¹⁷⁵ The Board, however, "in the light of extenuating circumstances" and "other considerations" may determine an amount less than the full amount found to have been wrongfully paid. The determinations of the War Labor Board are conclusive upon government agencies for purposes of ascertaining allowable tax deductions or reimbursable costs and expenses under contracts with the United States.

According to its 21st monthly report to the Senate the War Labor Board from Oct. 8, 1942 to Dec. 8, 1944 had received 51,444 wage or salary enforcement cases, disposed of 33,184, leaving, as of that date, 17,447 cases pending. As of December 31, 1944, 1295 final determinations involving \$3,991,136.00 had been forwarded to the Bureau of Internal Revenue for disallowance as legitimate deductions for tax purposes. Presumably, many of these same cases were forwarded to the appropriate contracting agencies for disallowance as reimbursable costs under contracts with the United States.¹⁷⁶

In case of convictions for willful violations of the stabilization program, Section 11 of the Act provides for fines of not more than \$1000, or imprisonment for not more than one year, or both.

IV. REFERENCES

- ¹ Code of Federal Regulations, Cumulative Suppl. 1943, page 1075.
- ² Act of June 25, 1943, Section 7(a)(1).
- ³ Act of June 25, 1943, Section 7(a)(2).
- ⁴ Montgomery Ward & Company, No. 192, June 29, 1942.
- ⁵ Reuben H. Donnelley Corporation, No. 4207-D, March 29, 1943.
- ⁶ Fruin-Colnon Company, No. 111-1384-D, August 3, 1943.
- ⁷ Municipal Government, City of Newark, Nos. 47 and 726, December 24, 1942.
- ⁸ Regulations, Office of Economic Stabilization, Section 4001.2.
- ⁹ *Idem.*
- ¹⁰ Security Title & Guaranty Company, No. 646, November 6, 1942.
- ¹¹ War Labor Disputes Act, Section 7(a)(1).
- ¹² The material on procedure is summarized from "Rules of Organization and Procedure for the National and Regional War Labor Boards," August 1944, as amended.
- ¹³ No. 111-2612-D, September 15, 1943. See also, the decision concerning the same company for its 1944-45 contract, Case No. 111-10446, January 10, 1945.
- ¹⁴ Westinghouse Airbrake Company, No. 111-1244-D, August 26, 1943.
- ¹⁵ Letter to Wright Aeronautical Corporation, Case No. 111-13706-D, March 5, 1945.
- ¹⁶ Rules of Organization and Procedure of the National War Labor Board, *supra*.
- ¹⁷ Tennessee Coal, Iron and Railroad Corp., No. 465, October 16, 1942, Puget Sound & Anacortes Fish Cannery, No. 111-2440-D, Jan. 10, 1944.
- ^{17a} Central and Eastern Oregon Pine Operators, No. 321, November 12, 1943.
- ¹⁸ Postal Telegraph and Cable Company, No. 86, April 1, 1942.
- ¹⁹ Weber Showcase & Fixture Company, No. 2749-CS-D, November 9, 1943.
- ²⁰ National Carbon Company, No. 13-353-D, February 2, 1944.
- ²¹ Hummer Mfg. Co., No. 2482-CS-D, August 26, 1943; Borg-Warner Corporation, No. 4246-CS-D, August 18, 1943.
- ²² Osbrink Mfg. Co., No. 111-34, March 9, 1944; Lincoln Machine Co., No. 111-2646-D, October 16, 1944.
- ²³ Marshall Field & Company, No. 10, February 25, 1942.
- ²⁴ No. 17, April 10, 1942.
- ²⁵ International Harvester Co., No. NDMB-4, April 15, 1942; Federal Shipbuilding & Drydock Co., No. NDMB-46, April 25, 1942.
- ²⁶ E-Z Mills, No. 55, June 18, 1942; Ranger Aircraft Engines Div., No. 24, June 18, 1942; Ryan Aeronautical Co., No. 46, June 18, 1942.
- ²⁷ Little Steel Companies, Nos. 30 et al., July 16, 1942.
- ²⁸ Humble Oil & Refining Company, No. 111-1819-D, April 1, 1944.
- ²⁹ WLB Release B-1957, February 14, 1945.
- ³⁰ Federal Shipbuilding & Drydock Co., No. 25-390-D, October 30, 1943.
- ³¹ Humble Oil & Refining Co., *supra*.
- ³² Ingalls Iron Works, No. 111-7502-D, January 11, 1945.
- ³³ Yale University, No. 111-700-D, September 30, 1943.
- ³⁴ Endicott Johnson Corporation, No. 111-1023-D, April 12, 1944.
- ³⁵ See: Harriman Mfg. Co., No. 111-4637-HO, June 7, 1944; Yale & Towne Mfg. Co., No. 111-3214-D, June 12, 1944; Pullman Standard Car Mfg. Co., No. 111-1612-D, June 14, 1944; Williamsport Textile Corp., No. 2922-CS-D, July 3, 1944.
- ³⁶ Carr, Adams & Collier Co., No. 111-39-C, December 24, 1944.
- ³⁷ Humble Oil & Refining Co., *supra*.
- ³⁸ *Idem.*
- ³⁹ Harvill Aircraft Corporation, No. 163, February 12, 1943.
- ⁴⁰ *Idem.*
- ⁴¹ Paul & Beekman Co., No. 111-3848-D, November 1, 1944.
- ⁴² Frank Foundries Corp., No. 111-81-C, March 2, 1944; Chattanooga Sash and Millwork Co., No. 111-1996-D, March 2, 1944.
- ⁴³ Little Steel Companies, *supra*.
- ⁴⁴ Glenn L. Martin, No. 111-7696-D, November 1, 1944; Douglas Aircraft Co., No. 111-7661-D, November 8, 1944; Inland Steel Company, No. 2159-D, May 18, 1944.
- ⁴⁵ Chrysler Motor Parts Corp., RWLB-VII, No. 111-2899-D, Jan. 12, 1944.
- ⁴⁶ WLB Resolution, March 28, 1944, Release B-1397; Winchester Repeating Arms Co., No. 443, February 5, 1943; Montgomery Ward & Company, *supra*.
- ^{46a} Republic Steel Corporation, RWLB-IV, No. 111-4965-D, April 12, 1944.
- ⁴⁷ Winchester Repeating Arms Co., *supra*; Detroit Steel Products Co., No. 532, Febr. 1, 1943; Acme Evans Milling Co., No. 584, January 18, 1943; American Cyanamid & Chemical Co., No. 2848-D, June 29, 1943; Big Four Meat Packing Cos., No. 111-5760-D, Sept. 19, 1944.
- ⁴⁸ McQuay-Norris Mfg. Co., No. 697, July 3, 1943; *same*, No. 111-2924-D, Jan. 17, 1945.
- ⁴⁹ Sullivan Drydock & Repair Co., No. 565, February 13, 1943.
- ⁵⁰ WLB Memorandum Release, issued July 24, 1943.
- ⁵¹ Walker Turner Co., No. 17, April 10, 1942; Montgomery Ward & Co., *supra*; Borg-Warner Corp., No. 497, January 20, 1943; Morse Twist Drill & Machine Co., No. 647, January 20, 1943.
- ⁵² Tabardrey Mfg. Co., Nos. 684-5, May 5, 1943.
- ⁵³ Walker Turner, Inc., *supra*; Champlin Refining Co., No. 238, September 11, 1942; American Cyanamid & Chemical Co., *supra*.
- ⁵⁴ Reynolds Metal Co., No. 193, August 29, 1942; Wilson Athletic Mfg. Co., No. 4203, August 11, 1943.
- ⁵⁵ New York Herald Tribune, No. 591, March 10, 1943; Cincinnati Hotels Assn., No. AR-3343, June 21, 1943; WLB Statement July 1, 1943, Release B-769.
- ⁵⁶ Consolidated Vultee Aircraft Corp., No. 111-5261-D, July 13, 1944; McQuay-Norris Mfg. Co., No. 2825-CS-D, September 28, 1944.
- ⁵⁷ J. C. Penney Co., No. 4263-CS-A, August 9, 1944.
- ⁵⁸ American Magnesium Co., No. 33, August 18, 1942.
- ⁵⁹ Holtzer-Cabot Electric Co., No. 111-6021-D, Octo-

ber 18, 1944; Ball Brothers Co., No. 111-5901-D, November 30, 1944.

⁶⁰ Wright Aeronautical Corp., No. 111-1375-D, Oct. 3, 1943; Automatic Transportation Co., No. 2570-CS-D, April 29, 1943; McQuay-Norris Mfg. Co., No. 2825-CS-D, *supra*.

⁶¹ Bendix Aviation Corp., No. 111-2937-D, January 11, 1945.

⁶² War Labor Disputes Act, Section 7(a)(2), E. O. 9017.

⁶³ Sperry Gyroscope Co., No. 70, May 6, 1942; Sun Shipbuilding & Drydock Co., No. 427, Oct. 1, 1942; Baltimore Transit Co., No. 522, Nov. 18, 1942; Thompson Products Co. Inc., No. 516, Nov. 26, 1942.

⁶⁴ Pacific Gas & Electric Co., No. 310, Oct. 16, 1942; Sun Shipbuilding & Drydock Co., *supra*.

⁶⁵ Western Cartridge Co., No. 491, Nov. 21, 1942; Montag Bros., No. 799, Febr. 5, 1943; Southern Service Co. Ltd., No. 111-358-C, April 24, 1943.

⁶⁶ Austin Co., No. 4264-D, April 10, 1943.

⁶⁷ War Labor Reports, vol. 14, page viii.

⁶⁸ No. 111-4581-D, March 1, 1944.

⁶⁹ Tabardrey Mfg. Co., NLRB Case No. R-5402, WLB Case No. 684. Cited in dissenting opinion in Chicago Transformer Corporation case, *supra*.

⁷⁰ Montgomery Ward & Co., No. 111-5353-HO, January 13, 1944.

⁷¹ Fred A. Snow Company, No. 111-5597-D, June 29, 1944.

⁷² Bendix Aviation Corporation, No. 111-7348, October 6, 1944.

⁷³ Universal Furniture Mfg. Co., No. 111-3315-D, October 4, 1944.

⁷⁴ Midwest Trucking Operators, No. 4648, Nov. 9, 1943.

⁷⁵ McGough Bakeries, No. 111-2275-D, May 19, 1944.

⁷⁶ Armour & Company, No. 111-644-D, August 1, 1944.

⁷⁷ See, Utah Copper Company, No. 111-4944-D, Dec. 22, 1943 and Idaho Potato Growers Assn., No. 111-5051-D, Febr. 9, 1944 and cases cited therein.

⁷⁸ Maryland Drydock Company, 12 LRR 439, May 12, 1943.

⁷⁹ Murray Corporation of America, et al., No. 111-2882-D et al. Report and findings of WLB Panel in Certain Disputes Involving Supervisors, January 19, 1945.

⁸⁰ Humble Oil & Refining Co., *supra*, and also, S. A. Woods Machine Co., No. 160, August 1, 1942; Shell Oil Co., No. 111-781-D, May 14, 1943.

⁸¹ WLB Resolution, July 25, 1942.

⁸² Ohio Bell Telephone Co., No. 281, July 31, 1942.

⁸³ H. K. Ferguson Company, No. 111-3331-D, January 13, 1944.

⁸⁴ Fruin-Colnon, *supra*.

⁸⁵ American Telephone & Telegraph Co., No. 111-5908-D, Nov. 28, 1944.

⁸⁶ *Idem*.

⁸⁷ J. Greenebaum Tanning Co., No. 879, August 28, 1943; U. S. Vanadium Corp., No. 111-1021-D, January 21, 1944; Cudahy Bros. Co., No. 111-1494-D, October 26, 1944.

⁸⁸ Employers Group of Motor Freight Carriers v. NWLB, Court of Appeals, D. C., June 2, 1944, cert. denied, U. S. Supreme Court, Oct. 9, 1944; U. S. v. Montgomery Ward & Company, D. C. N. D. Ill., Jan. 27, 1945.

⁸⁹ J. Greenebaum Tanning Company, *supra*.

⁹⁰ No. 111-887-D, Nov. 18, 1943.

⁹¹ *Supra*.

⁹² Radio Station WFTL, Miami, Fla., RWLB-IV, March, 1945.

⁹³ Int'l Brotherhood of Paper Makers, Local 66, AFL v. W.E.R.B., Wisc. Sup. Court, October 10, 1944; Frank Foundries Corp. v. Creager, Ill. App. Court, 2d Dist., September 19, 1944.

^{93a} Norge Machine Products Div. of Borg-Warner Corp., No. 111-5665-D, April 27, 1944.

^{93b} Scoville Mfg. Co., No. 111-8415-D, Nov. 21, 1944; Stanolind Oil and Gas Co., No. 111-9795-D, Nov. 21, 1944.

^{93c} E. A. Laboratories, No. 111-11443-D, Nov. 9, 1944 Opin. Jan. 23, 1945.

^{93d} Mac Laren Sportswear Co., No. 111-4417-D, July 11, 1944; Scoville Mfg. Co., *supra*; Stanolind Oil and Gas Co., *supra*.

^{93e} Super-built Furniture Mfg. Co., No. 111-9792, Nov. 27, 1944. (RWLB-X).

^{93f} NLRB v. Jones and Laughlin Corp., 301 U. S. 1.

^{93g} Stanton Power Plant No. 1, Scranton Electric Co., No. 111-11148-D, Dec. 12, 1944 (RWLB-III).

^{93h} American Telephone and Telegraph Co., No. 111-5908-D, Nov. 28, 1944.

⁹⁴ Public Law 729—77th Congress, 2d Session.

⁹⁵ Little Steel Companies, *supra*.

⁹⁶ Thirty Michigan & Wisconsin Lumber Companies, Nos. 583 et al., June 8, 1943.

⁹⁷ Little Steel Companies, *supra*.

⁹⁸ Pacific Telephone & Telegraph Co., No. 3047-D, Jan. 26, 1944.

⁹⁹ Mountain States Telephone & Telegraph Co., No. 111-4732-D, Nov. 14, 1944.

¹⁰⁰ Application of the Little Steel Formula, WLB Div. of Public Information, Oct. 1, 1943, 11 WLR xxx.

¹⁰¹ Lever Brothers Company, Nos. 149 & 176, September 2, 1942.

¹⁰² New York Employing Printers Assn., No. 111-90-R, June 25, 1943. In this case the Board approved but one-half of the allowance due.

¹⁰³ WLB Resolution, Nov. 16, 1943.

¹⁰⁴ OES Letter to the Bureau of Internal Revenue, Dec. 30, 1943. WLB General Order 10.

¹⁰⁵ Adopted December 8, 1942; see also, Pittsburgh Plate Glass Co., No. 2174, Oct. 19, 1943.

¹⁰⁶ Adopted February 18, 1943, as amended to Nov. 11, 1944.

¹⁰⁷ International Harvester Company, *supra*.

¹⁰⁸ Twenty-three Southern Cotton Textile Companies, et al., Nos. 111-5110-D et al., February 20, 1945.

¹⁰⁹ Statement of the Director of Economic Stabilization on the Policy Directive of May 12, 1943.

¹¹⁰ Adopted February 18, 1943, as amended to Nov. 11, 1944.

¹¹¹ Everbest Engineering Co., No. 551, May 26, 1943.

¹¹² WLB Statement of Wage Policy, November 6, 1942.

¹¹³ Swift & Company, No. 13-729, December 22, 1944.

¹¹⁴ General Chemical Co., No. 267, Sept. 18, 1942; North Electric Co., No. 481, June 16, 1943; West Coast Airframes Company, No. 174 et al., March 3, 1943; Basic Steel Companies (Carnegie-Illinois Steel Corporation et al., No. 111-6230-D, November 25, 1944).

¹¹⁵ Carbide & Carbon Chemicals Co., No. 4037-D, May 6, 1944.

¹¹⁶ WLB Instructions and Resolutions on Processing of "Fringe" Wage Adjustment Cases, issued February 23, 1945.

¹¹⁷ Directive of the Office of Economic Stabilization, March 8, 1945.

¹¹⁸ WLB Instructions to RWLBs, April 23, 1944, 15 WLR xli.

¹¹⁹ Statement of Chairman Davis before Senate Banking and Currency Committee, March 7, 1945.

¹²⁰ WLB Instructions to RWLBs, October 31, 1944.

¹²¹ Chrysler Motor Parts Corp., No. 714, Dec. 10, 1943.

¹²² Footnote 118, *supra*.

¹²³ Thirty Michigan & Wisconsin Lumber Companies, *supra*.

¹²⁴ Boeing Aircraft, No. 557, Sept. 4, 1943.

¹²⁵ Wright Aeronautical, No. 111-1375-D, Oct. 3, 1943.

¹²⁶ Industry—Wide Fir & Pine Companies, No. 111-1823-D et al., June 16, 1944.

^{126a} Letter from Director of Economic Stabilization to WLB Chairman, February 19, 1944, 14 WLR v.

¹²⁷ Fulton Iron Works, No. 111-2419-HO, April 6, 1944.

¹²⁸ Nonferrous Metal Cases, Nos. 111-4116-D et al., August 11, 1944.

¹²⁹ Bituminous Coal Mine Operators, No. 13-351-D, May 19, 1944.

¹³⁰ Letter from Director of Economic Stabilization to WLB, December 12, 1944. OES Statement, Febr. 12, 1945.

¹³¹ General Cable Company, No. 247, August 5, 1942.

¹³² Federal Shipbuilding & Drydock Co., No. 25-390-D, Oct. 28, 1943.

¹³³ Fulton Iron Works, *supra*.

¹³⁴ New York Milling Companies, No. 111-4962-D, Nov. 25, 1944.

¹³⁵ Aluminum Company of America, No. NDMB-66, Febr. 10, 1942.

¹³⁶ No. 111-849-D, Febr. 14, 1944.

¹³⁷ Reynolds Metals Company, No. 796, February 3, 1943; General Chemical Co., No. 460, Febr. 11, 1943; Quaker Oats Company, No. 2972-CS-D, April 13, 1943; Union Oil Co., No. 2968-D, June 11, 1943.

¹³⁸ Big Four Rubber Companies, Nos. 2307-D et al., May 21, 1943.

¹³⁹ Basic Steel Cases, *supra*.

¹⁴⁰ Bird & Sons, No. 111-8087-D, January 1945; RWLB-I; Resolution, Fifth RWLB, Jan. 3, 1945.

¹⁴¹ WLB Statement, March 4, 1943, 7 WLR xxii.

¹⁴² Sloss-Sheffield Steel & Iron Co., No. 4288-D, Oct. 6, 1943; Gaffney Mfg. Co., No. 367, April 29, 1943.

¹⁴³ St. Mary's Mfg. Co., No. 111-7029-D, January 27, 1945.

¹⁴⁴ Bristol Brass Corporation, No. 1-5117, December 8, 1943.

¹⁴⁵ Continental Baking Company, No. 111-6739-D, January 27, 1945.

¹⁴⁶ Blue Bird Potato Chips, No. 111-5941-D, October 31, 1944. See also Basic Steel cases.

¹⁴⁷ Globe Mills, No. 111-8115-D, December 1944.

¹⁴⁸ Bath Iron Works, No. 111-5143-D, April 24, 1944.

¹⁴⁹ Ranger Aircraft Engines Div., No. 111-2681-D, April 27, 1944.

¹⁵⁰ American Brake Shoe & Foundry Company, No. 111-1490-D, June 21, 1944; see also, Sinclair Oil Corp., No. 13-623, Sept. 28, 1944.

¹⁵¹ Los Angeles Motor Coach Co., No. 2289-CS-D, July 22, 1942; Western Union Telegraph Co., No. 2516-CS-D, Jan. 13, 1943.

¹⁵² Schenley Distillers Corp., No. 2-5537, July 22, 1943.

¹⁵³ Basic Steel Cases, *supra*.

¹⁵⁴ WLB General Order No. 10.

¹⁵⁵ Nineteen Hundred Corporation, No. 111-1138-D, Nov. 27, 1943; Interpretative Bulletin No. 4 to WLB General Orders, July 1, 1944.

¹⁵⁶ WLB General Order 38, adopted October 23, 1944.

¹⁵⁷ WLB General Order No. 31.

¹⁵⁸ General Electric Company, No. 111-3264-HO, October 5, 1944; Bijur Lubricating Corp., No. 111-2374-D, December 19, 1944.

¹⁵⁹ WLB Resolution, September 21, 1944, as amended.

¹⁶⁰ Basic Steel Cases, *supra*; Northern & Central Calif. Pine Lumber Operators et al., No. 111-5290-D et al., February 26, 1945.

¹⁶¹ Underwood Elliott Fisher Co., No. 178, Oct. 2, 1942; Chrysler Corporation, No. 240, October 2, 1942.

¹⁶² Rotary Cut Box Shook Industry, No. 111-132-C, Dec. 7, 1943; Northwest Match Cos., No. 2980-et al., Dec. 18, 1943; Aluminum Company of America, No. 2879, Febr. 19, 1944. See also WLB General Order 16.

¹⁶³ WLB Statement September 9, 1943.

¹⁶⁴ Basic Steel Cases, *supra*; New York & N. J. Milk Distributors, No. 111-11797-D, December 5, 1944.

¹⁶⁵ Teaford Danches Co., No. 111-2188-HO, July 11, 1944.

¹⁶⁶ Acme Rubber Company, No. 4197-CS-D, August 22, 1944; Detroit & Cleveland Navigation Co., No. 2325-CS-D, July 3, 1942.

¹⁶⁷ Little Steel Companies, *supra*.

¹⁶⁸ Employers Group of Motor Freight Carriers v. NWLB, *supra*.

¹⁶⁹ Montgomery Ward & Company v. NWLB, D. C. District of Columbia, June 15, 1944.

¹⁷⁰ Montgomery Ward & Company v. NWLB, Court of Appeals, District of Columbia, July 19, 1944.

¹⁷¹ U. S. v. Montgomery Ward & Co., D. C. N. D. Ill., January 27, 1945.

¹⁷² WLB Statement, Div. of Public Information, December 23, 1944, as amended.

¹⁷³ E. A. Laboratories, No. 111-11443-D, February 1945.

¹⁷⁴ Rules of Organization and Procedure of the National War Labor Board.

¹⁷⁵ Code of Federal Regulations, Title 29, Section 4001.15.

¹⁷⁶ Statement of William H. Davis before the Senate Committee on Banking and Currency, March 7, 1945.

STATEMENT ON ENFORCEMENT OF WAGE STABILIZATION PROGRAM, ISSUED BY THE NATIONAL WAR LABOR BOARD, MARCH 21, 1945

Enforcement of the law against the making of unauthorized wage adjustments is a part of the emergency war program to prevent wage and price inflation. The National War Labor Board has this duty to perform under the law enacted by Congress as supplemented by Executive Order of the President and Regulations of the Economic Stabilization Director.

Under the Regulations, the War Labor Board has the obligation to determine whether wage payments have been made in violation of the law. If the Board determines that payments in violation of the law have occurred the Regulations provide that the amount of the entire wage so paid (not merely the improper over-payment) shall be disregarded by all Executive Agencies of the Federal government, including the taxing authorities, in determining the costs or expenses of the employer. While these penalties are potentially severe, the Board has authority, on the basis of the facts in each particular case, to reduce or eliminate the penalties entirely.

In carrying out this part of the anti-inflation program, the War Labor Board has developed certain principles which it believes should be emphasized as an aid to employers in understanding the policies and procedures of the Board:

(1) The primary objectives of the enforcement program are the elimination of unlawful and unstabilizing wage practices, and the protection of employers and employees who do comply with the rules against the unfair competition for labor of those who have failed to comply.

(2) Like all other phases of the Board's work, authority to determine whether a violation exists and, in appropriate cases, to reduce or eliminate the penalties provided by law, is exercised by Tripartite Divisions of the Regional Boards consisting of an equal number of representatives of employers, employees and the public. The tripartite character of each such Division enables it to appraise fairly and understandingly the variety of circumstances under which violations occur and to give just consideration in each case to the existence of extenuating circumstances.

(3) No penalties may be assessed against an employer without his consent except after a hearing and decision by a Tripartite Division. There is a right of appeal from any such decision to the National War Labor Board in Washington.

(4) The Board's experience has shown, however, that the great majority of cases can be settled with the employer's consent through a simple and informal procedure which does not involve expensive or protracted hearings. Each such voluntary settlement is presented to and acted upon by the Tripartite Division.

(5) In the normal case it is not necessary for employers to engage special or technical consultants, although they may, of course, be represented in any proceeding by anyone they choose. Complaints have been made to the Board, however, that certain individuals have exaggerated the potential penalties that are likely to be incurred and have claimed special ability to achieve lenient disposition of cases. Any such claims are wholly unwarranted.

(6) In any case where it is found that improper payments have been made under extenuating circumstances, the prescribed penalties may be reduced or eliminated. The severity of the full sanctions provided by law is reserved for the cases which involve intentional and wilful violators as, for example, the second offender or one who has put an adjustment in effect after disapproval by the Board or one who has failed to discontinue an unauthorized adjustment after being directed to do so by the Board.

(7) There is no mechanical formula by which the amount of penalty can be determined in advance in any case. Each case must be decided on its own particular facts. The employer's voluntary disclosure of the facts and prompt cooperation in discontinuing unauthorized and unstabilized rates or practices are regarded as important indications or extenuating circumstances. The immediate discontinuance of unlawful and unstabilizing rates or practices is an absolute condition in any case where the Board is asked to reduce or withhold the prescribed penalties.

The cooperation of employers and their understanding of these policies and procedures will enable the Board to carry out its stabilization duties with the least possible friction and delay and will make it unnecessary for employers to incur needless expense.

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